

SENATE BILL No. 209

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3.1-31.

Synopsis: Community investment tax credits. Establishes a community investment tax credit against state tax liability for investments that: (1) qualify for a federal new market tax credit against federal income tax liability; and (2) are made in a community investment entity that agrees to reinvest 100% of its allocation of federal new market tax credits for low income communities in Indiana and at least: (A) 30% of the money that is certified by the Indiana economic development corporation for state community investment tax credits; and (B) 80% of its total assets in low income community businesses in Indiana.

Effective: January 1, 2005 (retroactive).

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January 9, 2006, read first time and referred to Committee on Tax and Fiscal Policy.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 209

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-31 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2005 (RETROACTIVE)]:

4 **Chapter 31. Community Investment Tax Credit**

5 **Sec. 1. As used in this chapter, "affiliate" means the following:**

6 (1) A parent entity that owns a controlling interest in a
7 federally qualified community development entity.

8 (2) Any subsidiary of a parent entity described in subdivision

9 (1) that qualifies as a federally qualified community
10 development entity.

11 **Sec. 2. As used in this chapter, "applicable percentage" means**
12 **five percent (5%) for each credit allowance date.**

13 **Sec. 3. As used in this chapter, "certified development entity"**
14 **refers to a federally qualified community investment entity that is**
15 **certified by the Indiana economic development corporation as a**
16 **certified development entity under section 21 of this chapter.**

17 **Sec. 4. As used in this chapter, "eligible business" means a**

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business that:

- (1) qualifies as a low income community business; and
- (2) is located in Indiana.

Sec. 5. As used in this chapter, "federal credit" refers to a new market tax credit granted under Section 45D of the Internal Revenue Code against federal income tax liability.

Sec. 6. As used in this chapter, "federally qualified community development entity" refers to a qualified community development entity (as defined in Section 45D of the Internal Revenue Code) that has an allocation of federal credits.

Sec. 7. As used in this chapter, "federally qualified equity investment" refers to a qualified equity investment (as defined in Section 45D of the Internal Revenue Code) that qualifies a federal taxpayer for a federal credit.

Sec. 8. As used in this chapter, "holder", with respect to a credit allowance date, refers to one (1) of the following:

- (1) The taxpayer or pass through entity that makes the original state certified investment, if the taxpayer or pass through entity owns the state certified investment on a credit allowance date.
- (2) A subsequent taxpayer or pass through entity that owns the state certified investment on a credit allowance date.

Sec. 9. As used in this chapter, "low income community business" refers to a business that qualifies as a qualified active low income community business (as defined in Section 45D of the Internal Revenue Code).

Sec. 10. As used in this chapter, "pass through entity" means a:

- (1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);
- (2) partnership;
- (3) trust;
- (4) limited liability company; or
- (5) limited liability partnership;

that is not subject to state tax liability.

Sec. 11. As used in this chapter, "reinvestment in low income communities in Indiana" refers to the use of the assets of a federally qualified community development entity for:

- (1) a capital or equity investment or loan to an eligible business;
- (2) an equity investment in or a loan to a federally qualified community development entity that is located in Indiana;
- (3) the delivery of financial counseling or other services to a

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business in or resident of Indiana; or

(4) a purchase from another federally qualified community development entity of loans that are made to an eligible business;

that qualifies as a qualified low income community investment (as defined in Section 45D of the Internal Revenue Code).

Sec. 12. As used in this chapter, "state certified investment" refers to a federally qualified equity investment that is certified by the Indiana economic development corporation as eligible for a state credit.

Sec. 13. As used in this chapter, "state credit" refers to a credit granted under this chapter against state tax liability.

Sec. 14. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 27-1-18-2 (the insurance premiums tax); and
- (3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 15. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or another entity that has state tax liability.

Sec. 16. Subject to this chapter, a holder that:

- (1) holds a state certified investment on a credit allowance date; and
- (2) does not receive another credit under any other law against state tax liability for the same state certified investment;

is entitled to a community investment tax credit in a taxable year in which a credit allowance date occurs against the holder's state tax liability for the taxable year.

Sec. 17. The amount of the state credit in a taxable year is equal to the amount determined under STEP TWO of the following formula:

STEP ONE: Determine the amount of the state certified investment that is held by the taxpayer on the credit allowance date in the taxable year.

STEP TWO: Multiply the STEP ONE amount by the applicable percentage for the credit allowance date.

Sec. 18. (a) If:

- (1) a pass through entity does not have state tax liability

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1 against which the state credit may be applied; and
 2 (2) the pass through entity would be eligible for a state credit
 3 if the pass through entity were a taxpayer;
 4 a shareholder, partner, or member of the pass through entity is
 5 entitled to a state credit under this chapter.

6 (b) Subject to this chapter, the amount of the state credit to
 7 which a shareholder, partner, or member of a pass through entity
 8 is entitled is the result determined under STEP TWO of the
 9 following formula:

10 STEP ONE: Determine a state credit for the pass through
 11 entity for the taxable year as if the pass through entity were
 12 a taxpayer with state tax liability at least equal to the amount
 13 of the credit.

14 STEP TWO: Determine the percentage of the pass through
 15 entity's distributive income to which the shareholder, partner,
 16 or member is entitled, as determined for federal income tax
 17 purposes.

18 Sec. 19. (a) If the amount of a state credit for a taxpayer in a
 19 taxable year exceeds the taxpayer's state tax liability for that
 20 taxable year, the taxpayer may carry the excess over to not more
 21 than three (3) subsequent taxable years. The amount of the state
 22 credit carryover from a taxable year shall be reduced to the extent
 23 that the carryover is used by the taxpayer to obtain a state credit
 24 under this chapter for any subsequent taxable year.

25 (b) A taxpayer is not entitled to a carryback or refund of an
 26 unused state credit.

27 Sec. 20. To apply a state credit against the taxpayer's state tax
 28 liability, a taxpayer must claim the state credit on the taxpayer's
 29 annual state tax return or returns in the manner prescribed by the
 30 department. A taxpayer claiming a state credit shall submit to the
 31 department a copy of the certification letter issued by the Indiana
 32 economic development corporation under section 22 of this chapter
 33 for the state certified investment that entitles the taxpayer to a
 34 state credit. In addition, the taxpayer shall submit to the
 35 department any additional information that the department
 36 determines is necessary for the department to determine whether
 37 the taxpayer is eligible for the state credit.

38 Sec. 21. (a) The Indiana economic development corporation
 39 shall establish a program to certify federally qualified community
 40 investment entities as certified development entities.

41 (b) An applicant must apply to the Indiana economic
 42 development corporation for certification in the manner and on the

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certified development entity application form prescribed by the president of the corporation.

(c) The Indiana economic development corporation shall certify an applicant as a certified development entity only if the:

(1) applicant is a federally qualified community investment entity;

(2) applicant or its affiliates have a record of successfully providing capital or other financing to eligible businesses located in Indiana;

(3) applicant or its affiliates have a record of successfully reinvesting federally qualified equity investments in Indiana;

(4) applicant and its affiliates by agreement with the corporation commit to allocate one hundred percent (100%) of the applicant's and the affiliates' allocation of federal credits for reinvestment in low income communities in Indiana;

(5) applicant and its affiliates by agreement with the corporation commit to continue to loan to or otherwise reinvest in eligible businesses for a period of at least fourteen (14) years after the last credit allowance date for the entity's last state certified investment at least thirty percent (30%) of the applicant's and the affiliates' state certified investments; and

(6) applicant by agreement with the corporation commits to invest at least eighty percent (80%) of the applicant's aggregate gross assets (including reserves) in eligible businesses.

Sec. 22. (a) The Indiana economic development corporation shall establish a program to certify federally qualified equity investments as state certified investments.

(b) The Indiana economic development corporation may certify a federally qualified equity investment as a state certified investment only if:

(1) a certified development entity designates the federally qualified equity investment for a state credit in a manner and on the designation form prescribed by the president of the Indiana economic development corporation; and

(2) the certified development entity that designates the qualified equity investment for a state credit and its affiliates are in compliance with the agreements entered into by the certified development entity and its affiliates under section 21 of this chapter.

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(c) The certification of a federally qualified equity investment under this section applies only to credit allowance dates that occur after the certification is made by the Indiana economic development corporation.

Sec. 23. (a) An action by the federal government under Section 45D of the Internal Revenue Code to disallow or recapture a federal credit for a qualified equity investment terminates the state credit only to the extent that the Indiana economic development corporation disallows or recaptures the state credit under this section.

(b) A holder of a state certified investment shall notify the Indiana economic development corporation if the holder's federal credit for the state certified investment is disallowed or otherwise recaptured.

(c) If the federal credit granted for a state certified investment is disallowed or recaptured, the Indiana economic development corporation may:

- (1) disallow the use of a part of the related unused state credit;
- (2) recapture a part of the related state credit that has been applied to the state tax liability of a taxpayer; or
- (3) both disallow under subdivision (1) and recapture under subdivision (2) the state credit.

The maximum percentage of the state credit that may be disallowed and recaptured under this section is the percentage of the total federal credit that is disallowed or recaptured under Section 45D of the Internal Revenue Code.

(d) The Indiana economic development corporation shall submit a copy of the corporation's determination under this section to the department.

Sec. 24. (a) Before April 1 each year:

- (1) after the initial year that a federally qualified community investment entity is certified as a certified development entity; and
- (2) before the fifteenth year after the last credit allowance date for the certified development entity's last state certified investment;

the certified development entity shall submit a report to the Indiana economic development corporation on the certified development entity's state credit program under this chapter.

(b) The report required by this section must include the following:

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(1) Information on the number and amount of state certified investments and federally qualified equity investments made by the entity in Indiana.

(2) A description of each certified business receiving an investment attributable to a state certified investment.

(3) An update on the financial status of the certified businesses.

(4) An update on new jobs, increasing wages, total investment, and revenue impact derived from the state certified investment.

(5) The sum of the state credits designated by the certified development entity under this chapter.

(c) A copy of the report required by this section shall be submitted to the president of the Indiana economic development corporation and the executive director of the legislative services agency. The report submitted to the executive director of the legislative services agency must be in an electronic format under IC 5-14-6.

Sec. 25. Before November 1 in each state fiscal year beginning in an odd-numbered year, the Indiana economic development corporation shall provide an evaluation of the state credit program. The evaluation must include an assessment of the:

(1) effectiveness of each certified development entity that receives a state certified investment in creating new jobs and increasing wages in Indiana; and

(2) revenue impact of the certified development entity's state credit program.

The evaluation may include a review of the practices and experiences of other states with similar programs or other similar federal programs. The president of the corporation shall submit the evaluation to the governor and the executive director of the legislative services agency. The report submitted to the executive director of the legislative services agency must be in an electronic format under IC 5-14-6.

Sec. 26. The Indiana economic development corporation may adopt rules under IC 4-22-2 that the corporation determines are necessary to carry out the purposes of this chapter, including rules to do the following:

(1) Facilitate the transfer of state credits earned under this chapter.

(2) Certify an investment for a state credit before the investment has received final approval for a federal credit

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1 **subject to the condition that the state credit is disallowed if**
2 **the federal credit is not granted.**

3 SECTION 2. [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]

4 **(a) The definitions in IC 6-3.1-31, as added by this act, apply**
5 **throughout this SECTION.**

6 **(b) IC 6-3.1-31, as added by this act, applies only to:**

7 **(1) federally qualified equity investments initially made; and**

8 **(2) taxable years beginning;**

9 **after December 31, 2005.**

10 SECTION 3. An emergency is declared for this act.

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